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FISCAL IMPACT STATEMENT

LS 6282

BILL NUMBER: SB 19

NOTE PREPARED: Nov 16, 2007

BILL AMENDED:

SUBJECT: Income Tax Withholding.

FIRST AUTHOR: Sen. Kenley

FIRST SPONSOR:

BILL STATUS: As Introduced

FUNDS AFFECTED: ☒ **GENERAL**
☒ **DEDICATED**
☐ **FEDERAL**

IMPACT: State & Local

Summary of Legislation: This bill requires wage withholding payments and estimated tax payments for nonresident aliens to be computed based on the application of not more than one personal exclusion. The bill requires employers to report to the Department of State Revenue the amount of withholdings attributable to local income taxes each time the employer remits the tax that is withheld.

The bill also requires an individual filing an estimated tax return to designate the portion of the estimated tax payment that represents state income tax liability and the portion of the estimated tax payment that represents local income tax liability. It provides that if an individual requests the payor of a distribution to withhold taxes from the distribution, the individual must designate the portion of the withheld amount that represents state income tax liability and the portion of the withheld amount that represents local income tax liability. This bill also requires the Department of State Revenue and the Office of Management and Budget to develop certain reports related to local option income taxes.

Effective Date: January 1, 2009.

Explanation of State Expenditures: The bill requires wage withholding payments and estimated tax payments for nonresident aliens to be computed based on the application of not more than one personal exclusion. It does not, however, restrict the number of personal exclusions that may be claimed on the taxpayer's final return for the taxable year. This bill requires employers to report to the Department of State Revenue (DOR) the amount of withholdings attributable to local option income taxes each time the employer makes a payment. Current statute only requires employers to report this amount with the employer's annual filing.

The bill also requires the DOR, in cooperation with the Office of Management and Budget (OMB), to develop reports and procedures to ensure the income taxes are accurately and properly distributed to each county, to develop a monthly report that summarizes the information obtained by the DOR as required by the bill, and to ensure the monthly report is made available to county auditors.

As a result of these changes, the DOR and the OMB could potentially incur additional administrative costs to implement and enforce the bill's requirements. However, the precise fiscal impact is indeterminable. The funds and resources that may be required to implement and enforce the new withholding and reporting requirements could be supplied through a variety of sources, including the following: (1) existing staff and resources not currently being used to capacity; (2) existing staff and resources currently being used in another program; (3) authorized, but vacant, staff positions, including those positions that would need to be reclassified; (4) funds that, otherwise, would be reverted; or (5) new appropriations. Ultimately, the source of funds and resources required to satisfy the requirements of this bill will depend upon legislative and administrative actions. The state vacant position report for November 16, 2007, indicates that the DOR has 362 vacant full-time positions and the OMB has 5 vacant full-time positions. Since the bill's provisions are effective beginning in tax year 2009, the fiscal impact would begin in FY 2010.

Explanation of State Revenues: *Nonresident Alien Withholding Requirement:* The extent to which revenue would be affected is indeterminable as the increase or decrease in exemptions claimed on nonresident aliens' final tax returns, and the associated dollar amount, is unknown. The fiscal issue is that of compliance and timing. State revenue may increase an indeterminable amount during the tax year due to withholding payments and estimated tax payments for nonresident aliens being computed based on the application of only one exemption. However, should nonresident aliens have more than one legitimate personal exemption, they may still be claimed on the taxpayer's final return. The result could be a potentially insignificant net impact on state revenue. A scenario where state revenue may increase an indeterminable amount is if nonresident aliens do not file a final tax return or they are currently claiming more exemptions than allowed. This bill may create an incentive for compliance in filing a final tax return in order to be eligible for a tax refund. Since the new withholding requirement is effective beginning in tax year 2009, any fiscal impact would begin in FY 2010.

Reporting Requirement: The new reporting requirements placed on the DOR and the OMB in addition to the new designation placed on taxpayers in regard to the amount of state income tax liability and local income tax liability withheld as a portion of total withholdings would have no fiscal impact on state revenues. The new designation requirement only applies to withholdings associated with an annuity, a pension, a retirement, or other deferred compensation plan.

Background Information: Nonresident aliens are taxed on earnings received while living in the U.S. and are exempt from paying Social Security tax. A person is classified as a resident alien if they have been issued a green card by the Bureau of Citizenship and Immigration Services or they pass the Substantial Presence Test. A nonresident alien could pass the Substantial Presence Test and be classified as a resident alien for tax purposes if they were physically present in the U.S. for 31 days during the current year *and* 183 days during a 3-year period that includes the current year and the 2 years immediately before that. Under Section 152B of the Internal Revenue Code, a resident of Canada or Mexico may be claimed as a dependent. This includes those individuals who reside in Canada or Mexico during the taxable year.

Eighty-six percent of the revenue from the Individual AGI Tax is deposited in the state General Fund, and 14% is deposited in the Property Tax Replacement Fund.

Explanation of Local Expenditures:

Explanation of Local Revenues: The extent to which counties imposing local option income taxes may experience an increase or decrease in revenue is indeterminable.

State Agencies Affected: Department of State Revenue.

Local Agencies Affected: Counties with a local option income tax.

Information Sources: Bureau of Labor Statistics; Urban Institute; Internal Revenue Service; U.S. Census.

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